UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,130	11/12/2003	Christopher Murray	50325-0818	8180

29989 7590 07/26/2007	EXAMINER
HICKMAN PALERMO TRUONG & BECKER, LLP	LUU, LE HIEN
2055 GATEWAY PLACE	

	ART UNIT	PAPER NUMBER
SUITE 550	2141	
SAN JOSE, CA 95110		

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	**Applicant(s)**
Office Action Summary	10/712,130	MURRAY ET AL.
	Examiner	**Art Unit**	
	Le H. Luu	2141	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05/07/07*.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
      closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15,24-26 and 30-45* is/are pending in the application.

      4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15,24-26 and 30-45* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *11/12/03* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

      Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

      Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

      a)☐ All   b)☐ Some * c)☐ None of:

          1.☐ Certified copies of the priority documents have been received.

          2.☐ Certified copies of the priority documents have been received in Application No. _____.

          3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
              application from the International Bureau (PCT Rule 17.2(a)).

      * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
     Paper No(s)/Mail Date *03/11/04*.

4) ☐ Interview Summary (PTO-413)
     Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1.   Claims 1-15, 24-26, and 30-45 are presented for examination.

2.   The title of the invention is not descriptive. A new title is required that is clearly

indicative of the invention to which the claims are directed.

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102

that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
> (b) the invention was patented or described in a printed publication in this or a foreign
> country or in public use or on sale in this country, more than one year prior to the date of
> application for patent in the United States.

4.   Claims 1-15, 24-26, and 30-45 are rejected under 35 U.S.C. § 102(b) as being

clearly anticipated by Higuchi et al. (Higuchi) Pub. No. 2002/0161891.

5.   As to claim 1, Higuchi teaches the invention as claimed, including a method for

adaptive load balancing comprising the steps of:

monitoring operating conditions of a server (page 3, paragraphs [0047-0050]);

determining, based on the operating conditions, whether to send a behavior

modification hint to one or more clients that are served by the server (page 3,

paragraphs [0050-0053]);

generating the behavior modification hint based on the operating conditions; and

sending the behavior modification hint to the one or more clients (page 3, paragraph

[0058], page 6, paragraphs [0110 – 0111]).

6.   As to claims 2-3, Higuchi teaches the server is an AAA server and the one or

more clients are AAA clients; the step of sending the behavior modification hint

comprises sending a RADIUS message containing the behavior modification hint in a

vendor specific attribute within the RADIUS message (page 2, paragraph [0041]; page

3, paragraph [0047 – 0048]).

7.   As to claims 4-5, Higuchi teaches the step of sending the behavior modification

hint comprises sending a particular message containing the behavior modification hint

to a particular client of the one or more clients, where the particular message is a

response message to a request message sent by the particular client to the server; the

step of monitoring the server's operating conditions comprises monitoring at least one of

CPU usage percentage, memory usage percentage, network conditions, and number of

processes running (page 3, paragraphs [0050-0053]; page 6, paragraphs [0110 –

0111]).

8.   As to claims 6-8, Higuchi teaches determining the one or more clients to which to

send the behavior modification hint based on a predefined list of clients; determining the

one or more clients to which to send the behavior modification hint based on a network

device group; determining the one or more clients to which to send the behavior

modification hint based on operating conditions for the server relative to each of the one

or more clients (page 3, paragraphs [0050-0053]; page 6, paragraphs [0110 – 0111]).

9.   As to claims 9-10, Higuchi teaches the server is one of multiple servers providing

a particular service; the behavior modification hint comprises a suggestion of one or more alternative servers; and the method further comprises the step of determining the one or more alternative servers based on operating conditions for each server of the one or more alternative servers; determining the one or more alternative servers further comprises the server obtaining the operating conditions of the one or more alternative servers over a network (page 2, paragraph [0034]; page 3, paragraphs [0048 – 0053]).

10.   As to claim 11, Higuchi teaches determining when to send a behavior modification hint is based on network conditions of one or more networks providing communication between the server and the one or more clients, wherein the network conditions comprise at least one of: a ping time from the server to a computer on the one or more networks; a round trip time of a message sent to a particular client; a quality of service guaranteed to one or more clients; and operating conditions of a device on the one or more networks used to route messages (page 2, paragraph [0041]).

11.   As to claim 12-15, Higuchi teaches sending a behavior modification hint further comprises the steps of: sending a code to the one or more clients; and generating the code based on why it was determined to send a message to the one or more clients; determining when to send a behavior modification hint is based on a scheduled event related to the server; wherein the scheduled event related to the server is selected from a group consisting of server shutdown, server maintenance, and server backup;

determining when to send a behavior modification hint is based on a server detecting

that a particular client has sent one or more retry messages, wherein a retry message is

a second or subsequent message corresponding to a particular request for service from

the particular client (page 3, paragraphs [0046 – 0053]).

12.   The following is a quotation of 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or
> composition of matter, or any new and useful improvement thereof, may obtain a patent
> therefor, subject to the conditions and requirements of this title.

13.   Claim 24 is rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter.   The language of the claim "A computer-

readable medium" raises a question as to whether the subject matter is new and useful

process, machine, manufacture, or composition of matter, or any new and useful

improvement.

14.   Claims 24-26 and 30-45 have similar limitations as claims 1-15; therefore, they

are rejected under the same rationale.

15.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Le H. Luu whose telephone number is 571-272-3884.

The examiner can normally be reached on 7:00am - 4:30pm.

       If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

LE HIEN LUU
PRIMARY EXAMINER